

# EXHIBIT 5

I, PAT J. DANIEL, City Secretary of the City of Houston, Texas, do hereby certify that the within and foregoing is a true and correct copy of Ordinance 1990-677 passed and adopted by the City Council of said City on the 13th day of June, 1990, as the same appears in the records in my office.

WITNESS my hand and the Seal of said City this 7th day of January, 2022.



Pat J. Daniel  
City Secretary

PRB893

City of Houston Ordinance No.

90-677

AN ORDINANCE PROVIDING FOR THE ISSUANCE OF PERMITS TO CERTAIN STREET PERFORMERS AND VENDORS DURING A TRIAL PERIOD IN A CERTAIN PORTION OF DOWNTOWN HOUSTON; CONTAINING FINDINGS AND OTHER PROVISIONS RELATING TO THE FOREGOING SUBJECT; PROVIDING FOR SEVERABILITY; AND DECLARING AN EMERGENCY.

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WHEREAS, the Code of Ordinances of the City prohibits the sale of most forms of merchandise in street rights-of-way and also prohibits the practice of conducting street performances for contributions from bystanders; and

WHEREAS, many other cities allow these activities on a regulated basis in order to promote the use of their downtown areas for tourism and cultural events; and

WHEREAS, the City Council desires to allow certain sales of merchandise and street performances within a portion of the downtown area that is associated with the Theater District on an experimental basis to determine what, if any, benefits or problems may arise; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOUSTON, TEXAS:

Section 1. As used in this Ordinance, the following terms shall have the meanings ascribed in this Section:

PRB893

(a) Director shall mean the Director of the City's Department of Planning and Development and shall include the said directors' designees.

(b) District shall mean the area including to the mid-point of and bounded by Preston Street on the north, Walker Street on the south, Milam Street on the east and Interstate Highway 45 on the west.

(c) Fee owner shall mean the holder of the fee title or other person having the present right of possession and control of the real property abutting the sidewalks. In those instances where the City is the fee owner, then it shall mean the department head of the City department responsible for maintenance and control of the property. No provision herein shall be construed to require any City department head to grant permission for the use of any City property or to waive the payment of any applicable concession or use fee.

(d) Merchandise vendor shall mean a person engaged in the sale of artwork, souvenirs, or fresh flowers, or any combination thereof.

PRB893

(e) Nonprofit arts organization shall mean an organization having exempt status under 26 U.S.C. §501(c)(3) as a charitable organization whose primary purpose is the presentation or promotion of art in any form.

(f) Permittee shall mean the holder of a permit issued by the Director under this Ordinance and includes the permit holder's agents, employees and subcontractors.

(g) Sidewalk shall mean that portion of the dedicated street right-of-way that is improved for pedestrian use.

(h) Street performers shall mean and include bands, musicians, singers, mimes and other artists who perform for gratuities without the use of any electronically amplified instruments and without electronic amplification of sound produced.

Section 2. The Director may issue permits to merchandise vendors and street performers for use of the sidewalks within the District during the term of this Ordinance. The Director may promulgate regulations relating to the filing and approval of applications and shall make copies thereof available in his office at the fees prescribed by law. Applications shall be granted on a first-applied-first-issued basis, subject to the aforesaid regulations and following criteria:

PRB893

- (a) Permits for merchandise vendors shall be limited to non-profit arts organizations which must provide written assurance that all proceeds in excess of necessary and reasonable operating expenses will be used exclusively for the development and promotion of the arts in the City. The applicant shall also demonstrate that it holds a City of Houston charitable solicitation permit for the purpose of conducting the sales.
- (b) Applicants for merchandise vendor permits shall be required to provide proof that their operations will be covered by comprehensive general liability insurance with limits of not less than \$100,000 for death of or injury to one person and \$300,000 for death of or an injury to more than one person and \$25,000 for property damage, per occurrence, which policy shall name the City as an additional insured, and shall provide that ten (10) days prior notice be given to the Director in the event of cancellation.
- (c) All applications shall be for a specific site which shall be identified to the extent that it can be clearly located on the sidewalk.
- (d) Each application shall be accompanied by the written permission of the abutting fee owner for the use of the site.
- (e) Sites for street performers shall be at least 130 feet apart.
- (f) The size and location of sites must be such that they will not pose a hazard to vehicular or pedestrian traffic.
- (g) A separate application and permit shall be required for each site.
- (h) Each merchandise vendor application shall describe the nature, size and manner of construction of any carts or racks, or other display equipment which shall be subject to review to ensure that the same will not pose a hazard to vehicular or pedestrian traffic.

PRB893

Each application shall be referred by the Director to the Department of Traffic and Transportation (Public Works Department following July 1, 1990) for review under the criteria of items (e), (f) and (h) above.

Section 3. Operations under permits shall be subject to the following restrictions:

- (a) A permit shall be valid only for the use of the site stated thereon and must be maintained at the site at all times while the site is in use.
- (b) All activities will be conducted upon the designated site.
- (c) In the event that activities at any site should cause undue vehicular and pedestrian traffic congestion or any other unsafe condition, then the Director or any peace officer of the City may direct the permittee to temporarily vacate the site until the situation has abated, and the permittee shall comply.
- (d) All equipment and materials shall be removed from the site at any time that the permittee is not physically present upon the site.
- (e) Sales of merchandise shall be limited to artwork, souvenirs and fresh flowers and shall be made only to pedestrians. No merchandise shall be offered or sold to any occupant of any vehicle.
- (f) Permittees shall remain within their sites and shall not hawk their merchandise or services in any manner, but may respond to inquiries about their merchandise or services.
- (g) The fee for a merchandise vendor permit shall be \$100.00, and the fee for a street performer permit shall be \$50.00.

PRB893

Section 4. The denial of a permit by the Director may be appealed to the City's Director of Finance and Administration or his designee who shall act as the hearing officer under this Ordinance. The Director may revoke permits for violation of this Ordinance or other applicable laws and regulations. Revocations shall also be subject to an appeal hearing to be conducted by the hearing officer. Decisions of the hearing officer shall be final.

Section 5. It is an affirmative defense to prosecution under Section 28-6 or Section 40-8 of the Code of Ordinances, Houston, Texas, that the actor was acting pursuant to a valid permit issued under this Ordinance and in compliance with this Ordinance.

Section 6. This Ordinance and any permits issued hereunder shall expire on July 31, 1990. Following its expiration, the Director shall make a report to the City Council assessing the benefits, if any, and problems, if any, arising from this Ordinance. The report may be utilized by the City Council in deciding whether to have similar programs in the future.

Section 7. If any provision, section, subsection, sentence, clause, or phrase of this Ordinance, or the application of same to any person or set of circumstances is for any reason held to be unconstitutional, void or invalid, the validity of the remaining portions of this Ordinance or their application to other persons

PRB893

or sets of circumstances shall not be affected thereby, it being the intent of the City Council in adopting this Ordinance that no portion hereof or provision or regulation contained herein shall become inoperative or fail by reason of any unconstitutionality, voidness or invalidity of any other portion hereof, and all provisions of this Ordinance are declared to be severable for that purpose.

Section 8. There exists a public emergency requiring that this Ordinance be passed finally on the date of its introduction as requested in writing by the Mayor; therefore, this Ordinance shall be passed finally on such date and shall take effect immediately upon its passage and approval by the Mayor; however, in the event that the Mayor fails to sign this Ordinance within five days after its passage and adoption, it shall take effect in accordance with Article VI, Section 6, Houston City Charter.

PASSED AND ADOPTED this 13<sup>th</sup> day of June, 1990.

APPROVED this 13<sup>th</sup> day of June, 1990.

  
Katherine J. Whitmire  
Mayor of the City of Houston

Pursuant to Article VI, Section 6, Houston City Charter, the effective date of the foregoing Ordinance is JUN 19 1990.

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City Secretary

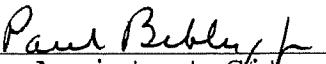
(Prepared by Legal Dept.

(PRB/ps 6/08/90)

(Requested by Planning and Development Department)

(L.D. File No. 21-90004)

PRB893

 Paul Babb, Jr.

Senior Assistant City Attorney

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## REQUEST FOR COUNCIL ACTION

*Approved*

<b>TO:</b> Mayor via City Secretary		<b>Agenda Item #</b> <i>36</i>
<b>SUBJECT:</b> An Ordinance providing for the issuance of permits to certain street performers and vendors during a trial period in certain areas of downtown Houston		<b>Category #</b> <i>9</i> <b>Page</b> <i>1</i> of <i>1</i>
<b>FROM (Department or other point of origin):</b> Planning & Development		<b>Origination Date</b> 06-05-90 <b>Agenda Date</b> JUN 13 1990
<b>DIRECTOR'S SIGNATURE:</b> <i>Patricia A. Frieden</i>		<b>Council District affected:</b> <i>1</i>
<b>For additional information contact:</b> Phone: M. Wallace 247-1217		<b>Date and identification of prior authorizing Council action:</b>
<b>RECOMMENDATION: (Summary)</b>  Approval of an Ordinance providing for the issuance of permits to certain street performers and vendors during a trial period in certain areas of downtown Houston  <i>WPA</i>		
<b>Amount and Source of Funding:</b> NONE		<i>90-677</i>
<b>SPECIFIC EXPLANATION:</b>  On May 9, 1990, City Council approved a resolution requesting that an ordinance be prepared which would allow for the limited sale of merchandise and street performances on City Rights-of-Way in certain areas of downtown Houston. The Department of Planning & Development, in coordination with Councilmembers Tinsley and Reyes, the Legal, Traffic & Transportation, and Parks and Recreation Departments, and Central Houston Civic Improvement, Inc., is presenting this requested ordinance.  The ordinance provides that non-profit arts organizations may receive permits to sell artwork, souvenirs and/or fresh flowers to pedestrians from designated sidewalk locations within an area bounded by Preston Street to the North, Walker Street to the South, Milam Street to the East, and Interstate Highway 45 on the West. The permit fee will be \$100.00. The Organization must provide assurances that proceeds from the sales, in excess of reasonable operating expenses, will be used exclusively for the promotion and development of the arts in the City. The ordinance also provides that street performers, including bands, musicians, mimes, singers and other artists who perform for gratuities without the assistance of electronic instruments or amplification, may obtain permits to perform within the same boundaries as described above for a fee of \$50.00.  The Department of Planning & Development will be designated to issue the permits. Each application for a permit must be accompanied by the written permission of the abutting property owner for the use of the site.  This ordinance and any permits issued under it will expire on July 31, 1990. Following that date, the Director of Planning & Development will make a report to the City Council evaluating the program and making recommendations as to its renewal.  Approval is recommended.  copy: Al Haines, Finance & Administration Clarence West, City Attorney		
<b>REQUIRED AUTHORIZATION</b>		
<b>F &amp; A Director:</b>	<b>GSD Director:</b>	<b>Other Authorization:</b>

MAYOR'S REQUEST FOR EMERGENCY PASSAGE

To the Honorable City Council of the City of Houston:

In accordance with the provisions of Article VII, Section 7 of the Charter of the City of Houston, I submit and introduce to you the ordinances set out in the attached agenda for the meeting of the City Council of the City of Houston on the 13th day of JUNE, 1990, with the request that all such ordinances, except those making a grant of any franchise or special privilege, be passed finally on the date of their introduction. There exists a public emergency requiring such action and I accordingly request that you pass the same if they meet with your approval.

DATE: JUNE 13, 1990

  
Kathryn D. Whitmire  
Mayor of the City of Houston